

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

\* \* \* \* \*

Hyung Kim,

Plaintiff,

vs.

REPORT AND RECOMMENDATION

Sears Robuck & Co.,

Defendant.

Civ. No. 07-4685 (PJS/RLE)

\* \* \* \* \*

This matter came before the undersigned United States Magistrate Judge upon routine supervision of cases filed in this Division, and upon an assignment made in accordance with Title 28 U.S.C. §636(b)(1)(B).

This matter was commenced on November 21, 2007, by the filing of a Complaint with the Clerk of Court. On April 8, 2008, it having appeared that one hundred and twenty (120) days had passed, and the Defendant Sears Robuck & Co. had not been served with the Complaint and Summons as required by Rule 4(m), Federal Rules of Civil Procedure, we issued an Order, which stated as follows:

That the Plaintiff is directed to show good cause, in writing, within twenty (20) days of the date of this Order, for an extension of time in which service can be effectuated. In

the absence of good cause shown, the Court shall Recommend that this action be dismissed for failure to effect proper service upon the Defendant Sears Robuck & Co., and for failure of prosecution.

The Plaintiff has failed to abide by the terms of our Order of April 8, 2008. Since we have previously warned the Plaintiff of the potential consequences for his failure to timely serve the Defendant, and to abide by the Orders of this Court, we recommend that this action be dismissed, for failure to comply with this Court's Order of April 8, 2008, for failure to effect proper service on the Defendant Sears Robuck & Co., and for lack of prosecution.

NOW THEREFORE, It is --

RECOMMENDED:

That this action be dismissed, without prejudice, for failure to comply with this Court's Order of April 8, 2008, for failure to effect proper service on the Defendant Sears Robuck & Co., and for lack of prosecution.

BY THE COURT:

Dated: May 8, 2008

s/Raymond L. Erickson  
Raymond L. Erickson  
CHIEF U.S. MAGISTRATE JUDGE

### NOTICE

Pursuant to Rule 6(a), Federal Rules of Civil Procedure, D. Minn. LR1.1(f), and D. Minn. LR72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties **by no later than May 23, 2008**, a writing which specifically identifies those portions of the Report to which objections are made and the bases of those objections. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

If the consideration of the objections requires a review of a transcript of a Hearing, then the party making the objections shall timely order and file a complete transcript of that Hearing **by no later than May 23, 2008**, unless all interested parties stipulate that the District Court is not required by Title 28 U.S.C. §636 to review the transcript in order to resolve all of the objections made.